

October 22, 1948

Rec
Hon. Wilson T. Wright
Arizona Corporation Commission
Capitol Annex
Phoenix, Arizona

LAW LIBRARY
ARIZONA ATTORNEY GENERAL

Dear Mr. Wright:

SHOW LOW WATER MEMORANDUM

GENERAL BACKGROUND:

The records of the Arizona Corporation Commission indicate that the people of Show Low have suffered from sporadic service, frequent breakdowns, inadequate supply, largely undrinkable and sometimes unsafe water since the summer of 1944.

The records further indicate that the water company concerned (Heywood Utilities, Inc. and its predecessor) has engaged in a series of failures and half failures to comply with the orders of the Commission to increase and improve their service, culminating in the testimony a few months ago by Yates Heywood to the effect that the utility had no intention of complying with the Commission's orders.

The last hearing concerning this matter was held October 18, 1948, in Show Low on the subject of the utility's application for an increase in rates. At that hearing it was brought out that very little of the property of the company is in the company's name, but instead, title is held largely in the hands of members of the Heywood family; that even the water shares by and through which the company secures its water are held in the name of a member of the Heywood family and not the company. Previous records show that much of the pipe line is privately owned by other townspeople and much more owned by the Heywoods has been privately financed by various of the users. It was also brought out that although the company claimed it needed an increase of rates in order to begin operating at a profit, actually a part of the increase was intended to be used for plant expansion and the remainder to interest outside capital to finance the rest of this expansion by putting present operations on a more profitable basis. Further, it was shown that in spite of the fact that the company purports to be losing money, other townspeople

seemed at one time to be willing to buy the company, undergo the expense of major improvements (such as changing the source of the water supply and digging wells therefor) and operate at the same rates, which they estimated would give them ample profit on their investment. Their present intentions, the extent of their research and names of the parties concerned, however, were not revealed. Finally, from the records of the Corporation Commission it is evident that the rates already charged by the utility are in the top 10% for rates of water companies of similar size around the State.

The Commission postponed its decision on the rate increase until it had the opportunity to take the matter under advisement. Then, on October 21, 1948, in Phoenix, the Commission instructed the Attorney General's Office to draw an order denying, for the present, the petition for rate increase until such time as more information could be gained toward a final solution, and to take any and all other necessary steps to aid the people of Show Low in accomplishing some final and satisfactory solution to their problems in this regard.

Still pending is Decision #18267 of the Commission, imposing a fine of \$500.00 upon Yates Heywood, as Manager of Heywood Utilities, Inc., for being in contempt and disobeying orders of the Commission, and also canceling the Certificate of Convenience and Necessity heretofore issued to Heywood Utilities, Inc.

At the request and upon the advice of the Attorney General's Office, the effective date of this decision was extended to November 4, 1948. And, on July 23, 1948, Heywood Utilities, Inc. filed an application for rehearing on the subject of Decision #18267 above, which application is still pending.

PHYSICAL PROBLEM:

The present source of water is from springs in Lakeside through open ditches to Show Low. Various County Sanitaricians, the Heywoods, interested townspeople and others agree that with these open ditches running through cow pastures, etc., Show Low can never be assured of a sanitary and safe supply of water and that the only final solution is the digging of a well or wells in Show Low.

In addition, the town is serviced by 1-1/2" and 2" mains which, at peak periods, have insufficient carrying capacity to supply the needs of the town and still have enough water left over to supply the west-end, the "hill". This shortage is further intensified by the lack of sufficient storage and standby facilities in terms of tanks, pumps, etc., and the inadequacy of upkeep and repair on the present facilities.

PRESENT CONDITION:

At the present time the water seems clearer than usual due to the efforts of no one but Mother Nature and chance in that the ditches are, temporarily at least, in good condition.

Yates Heywood has lately employed an operator and overseer, who is apparently doing the best job he can to keep the system, such as it is, in working order.

Yates Heywood has interested a Mr. White in putting up the capital to finance a well digging operation and finally take over ownership of the entire utility, all contingent, however, on the present application for rate increase being granted.

RECOMMENDATIONS FOR COMMISSION PROCEDURE:

1. The Commission should rescind and revoke its order (Decision #18267) dated July 8, 1948, fining Yates Heywood \$500.00, and revoking the Certificate of Convenience and Necessity for the following reasons:

- A. To revoke the Certificate of Convenience and Necessity would allow Yates Heywood to turn the key on the water company and leave the entire town of Show Low high and dry and put the utility out of the reach of control by either the Corporation Commission or the Courts. It would make of the water company a private business to be continued or discontinued at the whim of the owners. Mr. Yates Heywood's statements before the Commission and the entire record of this utility indicate the lack of sense of

responsibility to the town of Show Low and the probability of a complete shutdown occurring should the decision revoking the Certificate become effective. So long as the utility remains certificated, they may not, as a matter of law, abandon service until so allowed by the Commission or a Court, and any attempt to so do could and would be promptly and summarily enjoined.

B. The portion of the decision levying the fine ought also to be revoked for the reasons that the record shows no valid order issued to Yates Heywood now pending with which he has not complied; (the last valid uncomplied with order was, for reason unknown, canceled by the Commission some weeks later) there is some doubt as to whether the fine was legally levied upon Yates Heywood when it might more properly have been levied against Heywood Utilities, Inc.; and, most important, this problem can best be worked out in an atmosphere of cooperation instead of recrimination.

C. This Decision (#18267) and orders contained therein should be revoked in strict compliance with Section 69-247, -248, A.C.A., 1939, giving the Commission such power. It should be noticed to the Heywood Utilities, Inc., and Yates Heywood giving them opportunity to be heard. They will probably not take this opportunity as such revocation of Decision #18267 is what they want thus far, but still the statute should be strictly complied with. Their petition for rehearing which protests the decision should be granted at the same time and probably no rehearing will be necessary for the same reason.

2. At this stage, no receiver ought be appointed for the reason that there is no "pending litigation" as per the

requirements of the Receivers' Statutes (Sections 22-301 and ff); there are no qualified parties who are also disinterested who could or would act as receiver; there is very little to receive as most of the corporate assets are not in the corporate name; there is no way to show that a receiver is necessary to protect the property of Heywood Utilities, Inc., as per Section 22-301; no bonding company would supply a receiver's bond (Sec. 22-303) when the possibility of lawsuit against a receiver would be so imminent and the legality of the receivership so dubious, nor would anyone in his right mind accept such receivership for the same reasons. (Section 53-1009 probably does not apply to public utilities but only to investment companies.)

3. Certain of the interested businessmen of Show Low have employed Mr. Joseph Judge, a Tucson attorney and Show Low property holder, to represent them in these matters. It is the recommendation of this office that the people in Show Low discuss among themselves and with their attorney the various possible alternative solutions to the problem of water, recognizing that (a) Show Low is a growing community which can ill afford such water problems; and (b) That neither the Corporation Commission nor the Attorney General's Office can dig wells, run water companies, erect storage tanks, etc. Neither can the Commission nor this office operate in a vacuum. All we can do is to cooperate to the fullest extent of the law with any sound solution presented to us.

Some of the possible alternatives that Show Low should consider are:

- A. Private purchase of the company. Mr. Sutter informs me the Heywoods are ready to consider any reasonable offer.
- B. Formation of a municipality and a municipal water company by vote of the people (16-603) purchasing the existing utility at a fair price as determined by 16-604 and related sections. (This would require incorporation of the town.)
- C. Addition of private capital from Show Low residents to the present utility

to give the townspeople participation in management and the opportunity to aid in expansion and improvement.

- D. Further complaints against the present utility when service again becomes unsatisfactory - further orders of the Commission to increase and improve service - ability on the part of the Commission to levy fines, once a valid order is entered which is not complied with within reasonable time. The Commission, however, dare not cancel the certificate which would only have the effect of leaving Show Low completely stranded.
- E. Formation of an entirely independent and private water system by the people of Show Low with the hope that such system would get the Heywood franchise or another.
- F. As no performance bond would be given by the utility now operating (having been so advised by Mr. Sutter, the attorney for the company) the people of Show Low might inspect the rates now being charged, the background of Mr. White, and determine if they want to pay excessive water rates on the hope of expansion by the present utility.
- G. Private suit by parties damaged by the utility under Section 69-254.
- H. Other possibilities which ought be suggested and formulated by the parties concerned.

4. The Commission ought, on its own motion, order the assets of the present utility transferred to the company under Section 69-236.

40-104

CONCLUSION:

Hon. Wilson T. Wright
Arizona Corporation Commission

Page Seven
October 22, 1946

All the Commission and this office can do is cooperate to aid the people of Show Low in getting a satisfactory water system for themselves. This we are willing and eager to do. But we can neither build, buy nor run water companies. The initiative, the plan, etc., must come from Show Low.

Kindest personal regards,

Very truly yours,

EVO De CONCINI
Attorney General

EDWARD JACOBSON
Assistant Attorney General

EJ:lh

cc: Yale McFate
Wm. Brooks
Jake Linville
Joseph Judge
Wm. Huso
John Scott
Joseph West
Eric Marks, Point Pony Lodge, Show Low